

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	No. <u>M-17-239-M</u>
)	
JERRY DRAKE VARNELL,)	
)	
Defendant.)	

UNOPPOSED MOTION FOR DESTRUCTION OF EVIDENCE

COMES NOW the plaintiff, United States of America, by and through Robert J. Troester, Acting United States Attorney for the Western District of Oklahoma, and Matt Dillon, Assistant United States Attorney, and respectfully moves this Court to enter an Order allowing the destruction of certain evidence in this matter. Counsel has spoken with Counsel for Defendant, Marna Franklin, and she does not oppose this motion.

1. Jerry Drake Varnell was arraigned on a related federal Complaint (MJ-17-368-STE) on August 13, 2017, and previous counsel, Terri Coulter, was appointed (Docs. 1, 4, &5).

2. Defendant filed a Motion to Preserve Evidence and Brief in Support on September 6, 2017 (Doc. 26). Defendant's motion specifically requested to preserve "the alleged 'bomb'" and "access to samples for independent testing."

Id.

3. The United States filed its Response to Defendant's Motion to Preserve Evidence on September 15, 2017 (Doc. 39). In the United States' Response, the limitations in maintaining the inert vehicle borne improvised explosive device (VBIED) due to previous processing and risk of degradation was noted along with the steps that were being taken by the Federal Bureau of Investigation (FBI) to otherwise preserve the VBIED in its then present state. *Id.*

4. On September 17, 2017, Terri Coulter filed a Motion to Withdraw as Attorney of Record and Brief in Support (Doc. 40).

5. An Order granting the Motion to Withdraw as Attorney of Record was filed September 18, 2017 (Doc. 41).

6. Marna Franklin and Laura K. Deskin filed Entries of Appearance on behalf of Defendant on September 19, 2017 (Docs. 42 & 43).

7. On October 12, 2017, United States Magistrate Judge Shon T. Erwin entered an Order directing the preservation of evidence and ordered that "[t]he Government shall present a copy of [the] Order to the named agents and their supervisors." (Doc. 52). The Court noted the United States' limitations in maintaining the VBIED, but that the United States was taking measures to otherwise preserve the VBIED in its then present state. *Id.*

8. A letter from the United States Attorney and a copy of the Court's Order was sent to the agencies listed in Doc. 52 on October 13, 2017.

9. FBI has notified Counsel for the United States that the 1000 pounds of inert material that was substituted for the ammonium nitrate/fuel oil (ANFO)

has continued to degrade. It is believed that this degradation will continue to the point that the inert ANFO may not have the same physical appearance as it did at the time of the offense. This continued degradation along with the increased fire hazard associated with storing 1000 pounds of this bulk material is the basis of the request for destruction of this evidence. Two samples of the inert ANFO have been collected and are being held by FBI as evidence in this matter.

WHEREFORE, the United States of America requests the Court issue an unopposed Order allowing destruction of the inert ANFO.

Respectfully submitted,

s/Matt Dillon

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February 2018, an electronically transmitted the attached document to the Clerk of Court using the ECF System for filing to: Marna Franklin and Laura K. Deskin.

s/Matt Dillon